

through November 30, 1990. Neither the post-employment restrictions contained in section 27 as originally enacted nor as amended apply to any person during the suspension period. In addition, these post-employment restrictions do not apply on or after December 1, 1990, to any current or former Government employee whose only participation in a procurement occurred during the period from December 1, 1989, through November 30, 1990.

(ii) The suspension of the post-employment restrictions during the period December 1, 1989, through November 30, 1990, does not interrupt the running of the 2-year period of any post-employment restriction that attached to a Government employee who was a procurement official during the period July 16, 1989, through November 30, 1989.

(c) *Conduct and procurement activities on or after December 1, 1990—(1) Gratuities, employment discussions, and soliciting, obtaining, or disclosing proprietary or source selection information.* (i) The prohibitions contained in section 27, of the law as amended, apply on or after December 1, 1990, to persons who participate in a procurement on or after that date, whether as a procurement official, a competing contractor, or through access to information.

(ii) As provided in subdivision (a)(1)(ii) of this subsection, the prohibitions contained in section 27, of the law as amended, may also apply to procurement officials, competing contractors, and other persons who, during the period July 16, 1989, through November 30, 1989, were subject to the prohibitions of section 27 as originally enacted.

(2) *Post-employment restrictions.* (i) Public Law 101-510 continues the suspension of the post-employment restrictions contained in subsection 27(f) of the law as amended through May 31, 1991. Government employees who perform procurement official activities solely during the period December 1, 1990, through May 31, 1991, do not become subject to the post-employment restrictions contained in subsection 27(f) of the law as amended either during or after the suspension period.

(ii) The post-employment restrictions of subsection 27(f) of the law as

amended are effective June 1, 1991. Government employees who perform procurement official activities on or after June 1, 1991, are subject to those restrictions.

(iii) As provided in subdivision (a)(2)(ii) of this subsection, the post-employment restrictions contained in subsection 27(f) of the law as amended may also apply, on or after June 1, 1991, to current or former Government employees who were procurement officials during the period July 16, 1989, through November 30, 1989.

(iv) The continued suspension of the post-employment restrictions does not interrupt the running of the 2-year period of any post-employment restriction that attached to a procurement official during the period July 16, 1989, through November 30, 1989.

[55 FR 49853, Nov. 30, 1990]

### **3.104-3 Statutory prohibitions and restrictions.**

As provided in section 27 of the Act, the following conduct is prohibited:

(a) *Prohibited conduct by competing contractors (subsection 27(a) of the Act).* During the conduct of any Federal agency procurement of property or services, no competing contractor or any officer, employee, representative, agent, or consultant of any competing contractor shall knowingly—

(1) Make, directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of such agency, except as provided in 3.104-6(b);

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official of such agency; or

(3) Solicit or obtain, directly or indirectly, from any officer or employee of such agency, prior to the award of a contract any proprietary or source selection information regarding such procurement.

(b) *Prohibited conduct by procurement officials (subsection 27(b) of the Act).* During the conduct of any Federal agency procurement of property or services, no procurement official of such agency shall knowingly—

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(1) Solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of a competing contractor, except as provided in 3.104-6(a);

(2) Ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing contractor for such procurement; or

(3) Disclose any proprietary or source selection information regarding such procurement directly or indirectly to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(c) *Disclosure to unauthorized persons (subsection 27(d) of the Act).* During the conduct of any Federal agency procurement of property or services, no person who is given authorized or unauthorized access to proprietary or source selection information regarding such procurement, shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized by the head of such agency or the contracting officer to receive such information.

(d) *Post-employment Restrictions resulting from procurement activities of Government officers or employees who are or were procurement officials (subsection 27(f) of the Act; not effective until June 1, 1991).* (1) No individual who, while serving as an officer or employee of the Government or member of the Armed Forces, was a procurement official with respect to a particular procurement may knowingly—

(i) Participate in any manner, as an officer, employee, agent, or representative of a competing contractor, in any negotiations leading to the award, modification, or extension of a contract for such procurement; or

(ii) Participate personally and substantially on behalf of the competing contractor in the performance of such contract.

The restrictions in subdivisions (d)(1)(i) and (d)(1)(ii) of this subsection apply during the period ending 2 years after the last date such individual participated personally and substantially in the conduct of such procurement or personally reviewed and approved the award, modification, or extension of any contract for such procurement.

(2) This subsection does not apply to any participation referred to in subdivisions (d)(1)(i) and (d)(1)(ii) of this subsection with respect to a subcontractor who is a competing contractor unless—

(i) The subcontractor is a first or second tier subcontractor and the subcontract is for an amount that is in excess of \$100,000; or

(ii) The subcontractor significantly assisted the prime contractor with respect to negotiation of the prime contract; or

(iii) The procurement official involved in the award, modification, or extension of the prime contract personally directed or recommended the particular subcontractor to the prime contractor as a source for the subcontract; or

(iv) The procurement official personally reviewed and approved the award, modification, or extension of the subcontract.

[55 FR 36784, Sept. 6, 1990, as amended at 55 FR 49854, Nov. 30, 1990]

### 3.104-4 Definitions.

As used in this subsection—

(a) *Agency ethics official* means the designated agency ethics official described in 5 CFR 2638.201 and any other person, including deputy ethics officials described in 5 CFR 2638.204, to whom authority under 3.104-6(f) and 3.104-8(e) has been delegated by the designated agency ethics official.

(b)(1) *Competing contractor*, with respect to any procurement (including any procurement using procedures other than competitive procedures) of property or services means any entity (such as an individual, partnership, corporation, educational institution, nonprofit or not for profit organization, or business unit) legally capable of entering into a contract or subcontract in its own name that is, or is